

A right to suicide does not entail a right to assisted death

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Abstract

Many people believe that it is permissible for people who are suffering from terminal illnesses to commit suicide or even that such people have a right to commit suicide. Some have also argued that it follows that it is permissible for them, or that they have a right, to use the assistance of another person. First, I assume that it is permissible for a person to commit suicide and ask whether it follows that it is also permissible for the person to employ an agent to assist in the death. Second, I assume that people have a right to commit suicide and ask whether it follows that the right holders have a right to employ an agent to assist with the death. I argue that the permissibility of suicide does not by itself entail the permissibility of employing someone to assist in the suicide. I also argue that the right to commit suicide does not by itself entail the right to assisted death. Instead, what follows is that there is a right not to have unreasonable restrictions placed on the means by which one can exercise one's right to commit suicide. Whether a restriction is reasonable depends on the conclusion reached when one has weighed a number of policy considerations.

Introduction

There can be powerful reasons for considering suicide, such as unbearable pain and debilitating terminal illness that renders worthwhile human life impossible.¹ If such reasons are not overridden by countervailing moral considerations they provide a justification for suicide.¹ Some go further and claim that we have a right to commit suicide.² But it is not always easy or even possible to commit suicide without help. In such cases the person who wants to die may also want the assistance of another. Assisted death occurs when someone intentionally assists in causing another's voluntary death. This may involve knowingly providing the means for another to commit suicide or actually killing a person who wants to die.³ It does not include such assistance as

merely providing comfort or giving a person the means to commit suicide when there is no reason to suspect that the recipient wants to die.

In this paper I address two central issues. First, I assume that it is permissible for a person to commit suicide and ask whether it follows that it is also permissible for the person to employ an agent to assist in the death. Second, I assume that people have a right to commit suicide and ask whether it follows that the right holders have a right to employ an agent to assist with the death. My purpose is not to argue that suicide is morally permissible or that there is a moral right to commit suicide, but to see what follows from these assumptions.

There are, of course, other ways to argue for the right to (or the permissibility of) assisted death. It might be argued on utilitarian grounds that it is necessary to prevent terrible suffering. It might also be argued that there is a right to health care and that assisted death should be seen as part of that right. Whatever the merits of these arguments, I shall restrict myself to the claim that if it is permissible (or if there is a right) to commit suicide then it follows straightaway that it is permissible (or that there is a right) to employ an agent to assist with the death.

Permissibility and agents

In his book *The End of Life: Euthanasia and Morality* James Rachels argues that those who believe that suicide is morally permissible are committed to the view that assisted death is also sometimes permissible.⁴ Rachels begins with a general principle of practical reason which he states in the following manner:

"If it is permissible for a person (or if a person has a right) to do a certain action, or bring about a certain situation, then it is permissible for that person (or he or she has a right) to enlist the freely given aid of someone else in doing the act or bringing about the situation, provided that this does not violate the rights of third parties".⁵

Key words

Bioethics; right to die; euthanasia; assisted suicide.

I shall call principles of this sort "agency principles". Rachels states the caveat that using an agent

must not violate anyone's rights in order to avoid obvious counter-examples. As Rachels notes:

"if you invite me to your party, I may have the right to attend, but not necessarily the right to have someone else go in my place....".⁵

Rachels's caveat avoids such counter-examples, since using an agent in such a case would violate the terms of the invitation and thereby the host's rights.

Rachels's agency principle lumps together having a right to do something and the permissibility of doing something, but it is important to keep these distinct. I shall begin with an agency principle stated solely in terms of permissibility. Rachels's argument can then be outlined as follows:

1. If it is permissible for a person to do a certain action, then it is permissible for that person to enlist the freely given aid of someone else in doing the act or bringing about the situation, provided that the rights of others are not violated.⁵
2. Suicide is permissible.
3. Therefore, it is permissible for a person who wants to commit suicide to enlist the freely given aid of another to bring about his or her death as long as the rights of others are not violated.

Let us assume that the second premise is true – that suicide is morally permissible. The main concern, then, is with the version of the agency principle stated in the first premise.

A defender of the agency principle needs to worry not just about rights' violations in specific cases, but about the consequences of adopting an agency principle in a given area. In the case of assisted death, for example, many would argue that there are good utilitarian reasons for not allowing an agent to act on behalf of a person who wants to be killed. Recent literature has highlighted three such concerns. First, it has been argued that allowing physicians to engage in assisted death would be harmful to the standards and role of the medical profession.⁶ This harm does not necessarily involve the violation of anyone's rights, however. Even if people have a right to a minimum level of medical care, they do not have a right that the medical profession adopt the most desirable standards of care or the highest possible values. Second, it has been argued that allowing assisted death may make society less willing to devote resources to life-saving treatments or end-of-life care generally.⁷ Again, this may be a significant harm, but not a violation of rights. Whether or not individuals have a right to a minimum level of health care they do not have a right to all the life-saving treatments and end-of-life care that might be desirable. Individuals do not have a right that society devote ever more resources to end-of-life care, rather than to other goals. Third, people may feel social pressure to agree to assisted

death.⁸ The social pressure to engage in assisted death need not take the form of coercion or undue duress which would constitute a rights violation. It might rather constitute a subtle form of societal or family expectation that influences choice. In short, there can be good consequentialist reasons for adopting a policy which does not permit assisted death, even though the reasons are not so fundamental as to involve rights.

I am not arguing that such policy considerations in fact constitute a compelling reason against the permissibility of assisted death or even that the factual claims on which they are based are true. I am rather arguing that the plausibility of such claims needs to be taken into account in determining whether assisted death is permissible. It is simply not true that if suicide is morally permissible, then it follows straightaway that it is also morally permissible to use an agent to commit suicide as long as no one's rights are violated. The argument that it follows from the permissibility of suicide that assisted death is also permissible requires a factual premise that the benefits gained by the use of agents are not overridden by harmful consequences. Such a premise must be established by empirical investigation and not simply by moral analysis.

Rights and agents

The right to commit suicide, if it exists, is most plausibly construed as what H L A Hart calls a general liberty right, which correlates with a duty of all persons not to prevent the exercise of that right.⁹ Few would argue that the right to commit suicide is a positive welfare right like the right to adequate medical care or shelter. None the less, I shall consider this possibility later.

It might be thought that a stronger argument could be given for the agency principle by stating the principle in terms of rights rather than permissibility. To see why this is tempting several features of liberty rights need to be noted. First, a liberty right is not a special right which arises out of a particular agreement or institution and which thus correlates with a duty of only some persons.¹⁰ Second, liberty rights do not correlate with a duty to help a person exercise his or her rights. Even if there is a liberty right to commit suicide it does not follow that anyone has a duty to assist.¹¹ Hence, any right to assisted death that follows from a liberty right to commit suicide will be the liberty right of the person wishing to die and of his or her willing assistant not to be interfered with. Third, the duty of non-intervention provides a strong reason for not preventing the exercise of the right. This reason is not to be overridden by mere utilitarian or policy considerations short of preventing extremely grave harms.¹² It can, however, be overridden by competing rights.

These features provide a reason to hope that the sorts of utilitarian reasons which made the agency

principle stated in terms of permissibility unworkable, will not be relevant in dealing with rights. Since rights provide one with protection against reasons for interferences based on utilitarian considerations and since one way of interfering with the exercise of rights is to restrict the means by which those rights can be exercised, it might be thought that the right to something (for example, to commit suicide) entails the right to the means to do that thing (for example, to use an agent to assist in the suicide) as long as no overriding rights are violated. Although this argument might be tempting, there are compelling reasons for not accepting it. As will be shown, what follows from having a general liberty right to *x* is not that the right holder has a right to use any means to exercise the right or even a right to use means that are necessary for the exercise of the right, but that the right holder has a right not to have others unreasonably restrict the exercise of the right.

Reasonable regulations

Rights are subject to reasonable regulations. These regulations take into account such competing factors as other rights and various sorts of value considerations. In order to determine what would constitute justifiable regulations for a specific right it must first be determined why the right is valuable and how significant the value is. In addition it must be determined whether the core of the right will be violated by the proposed regulations. For example, the constitutional right to freedom of speech in the United States does not prevent the state from adopting reasonable time, place, and manner restrictions on my giving speeches in order to avoid excessive costs or burdens to others (for example, using loudspeakers in a public park after 10.00 pm) so long as the state does not prohibit all reasonable forums for speaking.¹³ It may even happen that the right holder does not have a right to use the only means which are available. For example, I may have a right to free speech, but be unable to exercise the right because the only time I am able to give my speech is during hours when it would disturb others. Again what matters is weighing the costs and benefits of various forms of regulation while preserving the core value of the right. Even if the right to free speech is construed as the right to be heard, it does not follow that the speaker has a right to use any particular means to be heard. In general, right holders must have at least some reasonable means for them to exercise their rights at some time, but they need not have available all possible means or all possible times.

The same reasoning applies to the right to commit suicide. If I have a right to kill myself, it does not follow that I have a right to use any means whatever. I do not, for example, have a right to hang myself in a public place or to throw myself in front of a passing truck. Such acts place unreasonable burdens on

others, and restricting such acts does not place an undue burden on the right to commit suicide. In short, whether a person with a right to commit suicide also has a right to use a particular means (for example, an agent) depends on precisely the sort of weighing of utilitarian considerations that were relevant for the agency principle stated in terms of permissibility.

The most problematic situations occur when it is extremely difficult for a person who has good reason to commit suicide to do so without help. For instance, a seriously ill person may enter a hospital and find himself or herself without the means to obtain weapons or medications to commit suicide and be unable to leave the hospital. Similarly, a paralyzed person may be unable efficiently to kill himself or herself without help. Of course, if such people are in circumstances in which it would be reasonable for them to end their lives they may do so by refusing food and water and thereby starving themselves. The question is whether this constitutes a reasonable opportunity to commit suicide. This depends, in part, on weighing the amount of suffering such patients must go through, even with pain medication, before dying without assistance against the potentially harmful consequences of permitting the use of an assistant. In the case of patients who are not paralyzed a crucial consideration will also be whether such persons have a reasonable opportunity to commit suicide before entering the hospital.

In general, whether a person with a liberty right to commit suicide also has a liberty right to use a willing agent depends on the sort of weighing process that will determine whether the use of an agent in such a situation would be a reasonable means of exercising the right. It must first be determined what value the right to commit suicide protects and how much weight the value has. It must then be determined what values compete with this value and how much weight they have.

This is also true if we interpret the right to commit suicide as a positive welfare right in which case the right holder has a claim on society to provide the means necessary for committing suicide. It does not follow, however, that the state must permit assisted death. It could be argued, depending on how the empirical factors noted above are balanced, that there are already enough means to commit suicide available in society (for example, firearms, knives, poisons, carbon monoxide, etc) and that regulations forbidding the use of assistants are reasonable.

Combining rights and permissibility

So far I have treated the agency principle stated in terms of permissibility and the agency principle stated in terms of rights separately. It might be thought that they could be combined to produce a reason for allowing a person to use an agent to assist in suicide. On this view, if I have a right to

commit suicide then it is permissible for me to allow another to assist me so long as no one else's rights are violated.¹⁴ Although there are various ways of understanding what it means to say that it is permissible to do something, what I have in mind here is that it is morally permissible to do x if and only if doing x is not morally wrong.

Rights and permissibility cannot be combined in this way, however. There are various cases in which we ought not to do what we have a right to do even if doing so does not violate the rights of another.¹⁵ For example, I may have a right to speak freely even though I ought not to exercise that right in a way that will gratuitously insult people or stir up needless racial tensions. Hence, it does not follow from the right to commit suicide that it is permissible to commit suicide.¹⁶ In those cases in which it is not permissible for me to commit suicide it is, of course, not permissible for me to use an agent to commit suicide. Hence, it does not follow from my having a right to commit suicide that it is permissible for me to use an agent to commit suicide.

Conclusion

If it is assumed that it is sometimes permissible to kill oneself or to refuse life-saving treatment, it does not follow that assisted death is also permissible. This is also true of the agency principle stated in terms of rights. What in fact follows is the weaker claim that right holders also have a right not to have the means by which they might exercise their rights unreasonably restricted. Whether a proposed restriction is reasonable requires a careful weighing of different policy and value considerations and not a simple deduction from rights claims.

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References and notes

- 1 Hill TE, Jr. Self-regarding suicide: a modified Kantian view. In: Hill TE, Jr, ed. *Autonomy and self-respect*. Cambridge: Cambridge University Press, 1991: 90–1.
- 2 Battin MP. Suicide: a fundamental human right? In: Battin MP, Mayo DJ, eds. *Suicide: the philosophical issues*. New York: St Martin's Press, 1980: 271.
- 3 Myers CD. The right to die: a justification of suicide. *Dialogue* 1992; 34: 60–3.
- 3 For a discussion of the moral differences between providing the means to commit suicide and killing a person who wants to die see Quill TE. *Death and dignity: making choices and taking charge*. Norton: New York, 1993: ch 8.
- 4 Rachels J. *The end of life: euthanasia and morality*. Oxford: Oxford University Press, 1986:86. Rachels speaks in terms of voluntary euthanasia rather than assistance in dying. What is important is that both terms include actively killing someone who has voluntarily agreed to it and providing a person who wants to die with the means to commit suicide.
- 5 See reference 4: 86.
- 6 Kass L. Is there a right to die? *Hastings Center Report* 1993; 23: 42.
- 7 For a detailed discussion of the slippery slope argument regarding euthanasia, see Wennberg R. *Terminal choices: euthanasia, suicide, and the right to die*. Grand Rapids Michigan: William B. Eerdmus Publishing Company, 1989: 192–220.
- 8 See reference 7: 42.
- 9 Both H L A Hart and Ronald Dworkin note that an important class of rights correlate with a duty of non-interference. See Hart HLA. Are there any natural rights? *Philosophical Review* 1955; 64: section II and Dworkin R. *Taking rights seriously*. Cambridge, Massachusetts: Harvard University Press, 1977: 199–200.
- 10 See reference 9: Hart, section II.
- 11 Nowell-Smith P. Death by request as a right. *The Euthanasia Review* 1987; 2: 80–95, at 84.
- 12 This view is defended in detail by Ronald Dworkin. See reference 9: Dworkin, 198–205.
- 13 For a discussion of the distinction between unconstitutional abridgments of speech based on content and constitutional restrictions of speech based on time, place, and manner regulations not related to content, see Tribe L. *American constitutional law*, Mineola, New York: The Foundation Press, Inc, 1988: ch 12, sections 2 and 3.
- 14 See reference 11: especially 84.
- 15 As Ronald Dworkin points out, someone may have a right to do something that it would be wrong to do. See reference 10: 188. See also Meyer MJ. Dignity, rights and self-control. *Ethics* 1988; 99: 526–8 and Waldron J. A right to do wrong. *Ethics* 1981; 92: 21–39.
- 16 Along these lines James Bogen argues that whether or not a person ought to commit suicide is not wholly determined by his or her rights, obligations and duties. See Suicide and virtue. In: Battin MP, Mayo DJ, eds. *Suicide: the philosophical issues*: 286–292.